

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1656-01  
Bill No.: Perfected HB 658  
Subject: Crimes and Enforcement; Drugs and Controlled Substances; Law Enforcement  
Officers and Agencies  
Type: #Revised  
Date: May 12, 2011  
#Revised with new information from the Department of Health and Senior Services as well as a new Oversight assumption.

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Bill Summary: This proposal creates the Meth Lab Elimination Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
#General Revenue	(\$314,273) or (\$1,298,895)	(\$377,128) or (\$959,524)	(\$62,855) or (\$160,430)
<b>#Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$314,273) or (\$1,298,895)</b>	<b>(\$377,128) or (\$959,524)</b>	<b>(\$62,855) or (\$160,430)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
#Other State Funds	(\$128,328)	(\$153,994)	(\$25,666)
<b>#Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$128,328)</b>	<b>(\$153,994)</b>	<b>(\$25,666)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
#General Revenue	0 or 3 FTE	0 or 3 FTE	0 or 3 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 or 3</b>	<b>0 or 3</b>	<b>0 or 3</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Local Government</b>	<b>(\$261,895)</b>	<b>(\$314,273)</b>	<b>(\$53,379)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Health and Senior Services, Office of Prosecution Services, Office of the State Public Defender, Office of the State Courts Administrator,** and the **Department of Public Safety - Director's Office** each assume the proposal would not create a fiscal impact to their respective agencies.

Officials from the **Department of Corrections (DOC)** state this legislation requires Missouri pharmacies to sell pseudoephedrine based cold medicines only to individuals who have a valid doctor's prescription. Raising the schedule severity to III may make ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers more difficult to obtain for manufacturing methamphetamine and therefore reduce the number of convictions.

This legislation could have an unknown savings to DOC if it decreases the number of individuals who become incarcerated due to crimes related to the use of manufacture of methamphetamine.

In response to the original bill, officials from the **Department of Public Safety - Highway Patrol (MHP)** stated as written, the legislation exempts natural dietary and herbal products with 15% ephedrine content or less. It is hypothetically feasible that this could be a means for meth producers to circumvent the law. If this occurs, courts could potentially call upon the crime laboratory to quantitate the concentration of ephedrine in these products for prosecution. The laboratory currently does not have the analytical equipment required to perform this type of test and would need to acquire equipment to do so. Therefore, it was estimated that the MHP would have to purchase two Liquid Chromatograph Mass Spectrometers at a cost of approximately \$200,000 each for a total expense of \$400,000.

However, now upon further discussion, it was determined that the percentage of dietary supplements, herbs, or natural products, including concentrates or extracts, would not have a fiscal impact upon the Patrol's Crime Laboratory. Therefore, the Highway Patrol anticipates no fiscal impact from this bill.

**Oversight** will utilize the revised estimate provided by the MHP.

ASSUMPTION (continued)

House Amendment 1 - Changes to pseudoephedrine tracking:

The system that tracks the purchase of pseudoephedrine has been developed and maintained by companies and not the Department of Health and Senior Services (DOHSS). DOHSS assumes these companies, with these changes, will no longer maintain the current system of tracking ephedrine sales and therefore, DOHSS will need to develop a similar system that will account for the changes made with this bill. Due to time constraints, DOHSS stated the cost of developing such a system was reflected in a fiscal note in 2008 for SB 732. DOHSS stated they did not receive funding for developing the system since companies agreed to develop it. Therefore, Oversight will utilize DOHSS response in 2008 for developing such a system.

Officials from the **Department of Health and Senior Services (DHSS)** assume costs associated with the proposed bill relate to the implementation of Sections 195.017.12, which requires the implementation of an electronic log of transactions involving the sale of ephedrine, phenylpropanolamine, or pseudoephedrine products.

*Bureau of Narcotics and Dangerous Drugs (BNDD) Costs:*

One Health and Senior Services Manager (1) will be needed to perform the following duties:

- On an on-going basis monitor the program, maintain ongoing communication with the ITSD staff responsible for maintenance of the program applications, communicate with professional organizations regarding compliance with reporting requirements, and communicate with other state and local agencies and the public regarding the program;
- Coordinate with investigative management of the BNDD for enforcement activities and with law enforcement and regulatory agencies of this and other states for sharing data and tracking outcomes;
- Develop regulations, training materials and policies and procedures related to reporting by dispensers, access to data by authorized parties; provide technical assistance to program participants on matters relating to the program;
- Supervise subordinate staff involved in program implementation and administration; and
- Work with ITSD staff to design and prepare reports of program data; review data reports and report to administration trends identified.

ASSUMPTION (continued)

One Office Support Assistant (keyboarding), would be necessary to provide clerical support to the program and to respond to inquiries and requests for database reports received. This individual will perform coordination of communication with other agencies and the public and maintenance of memoranda of understanding for data sharing; assist practitioners in obtaining access to the reporting subsystem of the program and assist in the generation and distribution of reports as requested by authorized individuals and agencies that cannot access this information via the internet. This individual will also be responsible for responding to routine telephone inquiries regarding the program. Standard expense and equipment costs are included for the two BNDD positions identified above.

*Office of Administration, Information Technology Services Division (ITSD) Costs:*

Support from ITSD will be needed to assist the DHSS in purchasing and customizing a data system to provide pharmacies in this state access to a realtime electronic logbook for the purposes of entering into the realtime logbook any transaction required to be reported under section 195.017, RSMo.

It is assumed that the application(s) will reside on servers at DHSS-ITSD and due to the large amount of data that will be collected and stored, a Storage Area Network (SAN) will need to be purchased. The hardware costs included in this response assumed the ongoing leasing of all hardware.

ITSD estimates that the following costs will apply:

Consultant cost for purchase and implementation of application. \$673,500 in FY 12, \$250,000 in FY13 and FY14.

The total amount for hardware and leasing requirements is \$96,391 annually.

ITSD Staffing:

1 FTE - Computer Information Technology Specialist II will be required to provide project management, development support and administration/maintenance of application.

1 FTE - Computer Information Technologist II will be required to provide on-going support of the application.

ASSUMPTION (continued)

.50 FTE - Computer Information Technology Specialist I will be required to provide hardware server support installation and maintenance.

Standard expense and equipment costs related to each position are also included.

**Oversight** assumes the DHSS/BNDD could absorb one Office Support Assistant FTE and the DHSS/ITSD could absorb a one-half Computer Information Technology Specialist I FTE.

House Amendment 2 states the amendments shall expire on August 28, 2013; therefore, Oversight will assume the program will be in effect for two years and that DOHSS will not require the additional FTE past August 31, 2013 (2 months in FY 2014). Oversight reduced all expenses estimated for FY 2014 to two months.

#Upon further review, the DOHSS states the current contract for a Methamphetamine Precursor Database with Appriss, Inc., which expires on December 31, 2012 has two renewal periods. The RFP states ‘the Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.’ Therefore, DOHSS assumes they can require Appriss, Inc. to fulfil the obligations of the contract until December 31, 2014. The agreed-to total one-time required costs of the contract was \$0.01 and the monthly recurring costs are \$0.00 per year. With this assumption that the contract can be enforced through 2014, DOHSS assumes the proposal will not have a fiscal impact on their agency.

#Oversight is unsure that the state can require Appriss, Inc. to continue fulfilling the contract since the state is not paying for this service. Therefore, Oversight will range the fiscal impact from this proposal regarding the precursor database from \$0 (Appriss, Inc. will continue as stated in the contract) to the amounts estimate for DOHSS to create and service its own methamphetamine precursor database.

#Officials from the **Department of Revenue (DOR)** state making those drugs available by prescription only would make them exempt from sales tax under Section 143.030.2(18). DOR does not have statistics regarding how many of those drugs are sold in Missouri, but each \$1 million in sales would reduce total state revenue by \$42,250. The Department would have no fiscal impact, but would need to make adjustments to regulations.

ASSUMPTION (continued)

#Oversight notes that this proposal would, in effect, eliminate the sales tax collected on some ephedrine, pseudoephedrine, or phenylpropanolamine products, since OTC drugs are taxed, while prescription drugs are not. According to information provided by Appriss, Inc., there were 149,654 purchase per month on average in Missouri of these drugs. The report doesn't break out the percentage of these purchases by tablet, liquid, gel-caps, size of package, etc. Therefore, Oversight will assume half of the purchases were in tablet form (which would now need a prescription with this proposal), the average price per purchase of \$7, and that the amount of sales for the product will not be reduced by the added step of getting a prescription. Therefore, Oversight will assume an annual reduction of sales tax revenue to the state of \$531,122 (149,654 purchases x \$7 x 12 months x 4.225%). The breakout of Oversight's assumed loss in sales tax revenue would be:

General Revenue (3%)	\$377,128
School District Trust Fund (1%)	\$125,709
Parks and Soils (.1%)	\$ 12,571
Conservation (.125%)	<u>\$ 15,714</u>
TOTAL	\$531,122

#Oversight will indicate a negative fiscal impact for the state General Revenue Fund and for those other state funds (Conservation Commission, Parks and Soils, School District Trust Fund) which receive sales tax revenues, and for local governments.

#Oversight will also assume an average sales tax rate of 2.5% for the local political subdivisions. Therefore, using the same assumptions as above, Oversight will assume an annual sales tax loss of \$314,273 (149,654 purchases x \$7 x 12 months x 2.5%). .

#In response to a relatively similar proposal from this year (HB 55), officials from the **Office of Administration, Division of Budget and Planning** (BAP) provided statistics from a trade association for OTC drug manufacturers, the Consumer Healthcare Products Association.

ASSUMPTION (continued)

#According to the association, retail sales of OTC drugs (excluding Wal-Mart) are shown in the following table.

2003	\$14.2 billion
2004	\$14.1 billion
2005	\$15.0 billion
2006	\$15.3 billion
2007	\$16.0 billion
2008	\$16.8 billion
2009	\$16.9 billion

#Assuming 1.7% of these sales were made in Missouri, then \$287.3 million in sales occurred in 2009 in the state. The table suggests average growth of about 3.4% each year. BAP did not have information suggesting how much of these amounts were by prescription, nor the amount of Wal-Mart sales of OTC drugs. BAP officials concluded that this proposal would have an unknown impact on general and total state revenues.

#Regarding the potential increase of Medicaid expenditures by moving the specified drugs to prescription, the **Department of Social Services** stated requiring a prescription for pseudoephedrine products will have little to no impact on the MO HealthNet program. The state already pays for OTC pseudoephedrine products now in the program and participants, in order for MO HealthNet to reimburse for these items, must have a prescription and a pharmacy has to fill the script. A bill requiring a prescription for pseudoephedrine products is no different to how we operate today, causing little impact.

#House Amendment 2 states the amendments shall expire on August 28, 2013; therefore, **Oversight** will assume the program will be in effect for two years and that reduction in sales tax revenue from this proposal as well as the potential DOHSS expenses for running the database will occur for a couple of months in FY 2014.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
<b>GENERAL REVENUE FUND</b>			
<u>#Revenue reduction</u> - loss of sales tax revenue from moving sale of certain pseudoephedrine products from OTC to prescription	(\$314,273)	(\$377,128)	(\$62,855)
<u>#Costs</u> - Department of Health and Senior Services			
Personal Services	\$0 or (\$108,780)	\$0 or (\$131,841)	\$0 or (\$22,193)
Fringe Benefits	\$0 or (\$56,935)	\$0 or (\$69,006)	\$0 or (\$11,616)
Equipment and Expense	\$0 or (\$49,016)	\$0 or (\$35,158)	\$0 or (\$6,035)
Consultant & Purchase of Application	\$0 or (\$673,500)	\$0 or (\$250,000)	\$0 or (\$41,666)
Specialized Computer Equipment	\$0 or (\$96,391)	\$0 or (\$96,391)	\$0 or (\$16,065)
<u>Total Costs - DHSS</u>	\$0 or (\$984,622)	\$0 or (\$582,396)	\$0 or (\$97,575)
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>(\$314,273) or (\$1,298,895)</b>	<b>(\$377,128) or (\$959,524)</b>	<b>(\$62,855) or (\$160,430)</b>
Estimated Net FTE Change for General Revenue Fund	0 or 3 FTE	0 or 3 FTE	0 or 3 FTE
<b>#OTHER STATE FUNDS (School District Trust, Conservation Commission, Parks and Soils)</b>			
<u>#Revenue reduction</u> - loss of sales tax revenue from moving sale of certain pseudoephedrine products from OTC to prescription	(\$128,328)	(\$153,994)	(\$25,666)
<b>#ESTIMATED NET EFFECT TO THE OTHER STATE FUNDS</b>	<b>(\$128,328)</b>	<b>(\$153,994)</b>	<b>(\$25,666)</b>

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>#Revenue reduction</u> - loss of sales tax revenue from moving sale of certain pseudoephedrine products from OTC to prescription	<u>(\$261,895)</u>	<u>(\$314,273)</u>	<u>(\$52,379)</u>
<b>ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS</b>	<b><u>(\$261,895)</u></b>	<b><u>(\$314,273)</u></b>	<b><u>(\$52,379)</u></b>

FISCAL IMPACT - Small Business

Licensed pharmacies and dispensing practitioners may incur an indeterminate fiscal impact for adhering to the changes in this proposal.

FISCAL DESCRIPTION

This bill removes all methamphetamine precursor drugs except those in a liquid or liquid-filled gel capsule form from the list of Schedule IV and Schedule V controlled substances and reclassifies them to the list of Schedule III. As a result of the reclassification, a physician's prescription will be required to obtain any of these drugs except those in a liquid or liquid-filled gel capsule form. These provisions are to be known as the Meth Lab Elimination Act.

The bill also specifies that current provisions regarding the required logging and recording of the sales as well as the storage of these drugs behind the counter away from public access will continue to apply to the liquid and liquid-filled gel capsule forms of these drugs.

The provisions of the bill will expire August 28, 2013

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Health and Senior Services  
Department of Public Safety  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Office of the State Courts Administrator

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
May 12, 2011